

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. CV 15-0424 WJ/GBW
CR 13-2957 WJ

JESUS ARMANDO MIXTEGA-VILLEGAS,

Defendant.

MEMORANDUM OPINION AND ORDER TO SHOW CAUSE

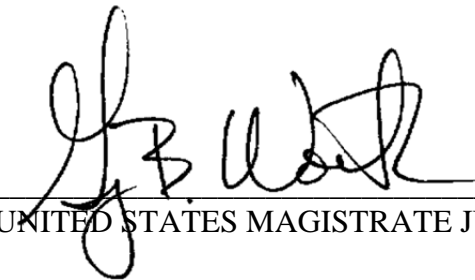
This matter is before the Court, *sua sponte* under rule 4(b) of the Rules Governing Section 2255 Cases, on Defendant's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence (CV Doc. 1; CR Doc. 26) filed on May 18, 2015. Defendant asserts that his post-conviction efforts at rehabilitation warrant reduction of his sentence. The Court will require Defendant to show cause why his motion should not be dismissed.

On December 6, 2013, the Court entered judgment (CR Doc. 25) on Defendant's conviction and sentence. No appeal was filed, and Defendant's conviction thus became final, at the latest, in late-December, 2013, fourteen days after entry of the amended judgment. *See United States v. Garcia-Roman*, 466 F. App'x 750, 750 (10th Cir. 2012). Approximately seventeen months later, on May 18, 2015, Defendant filed this motion under 28 U.S.C. § 2255.

Defendant will be required to show cause why his § 2255 motion should not be

dismissed as untimely. The applicable one-year limitation period in § 2255 had expired when Defendant filed his § 2255 motion, *cf. United States v. Burch*, 202 F.3d 1274, 1279 (10th Cir. 2000), and the motion must be dismissed unless he establishes grounds for tolling, *see United States v. Cordova*, No. 99-1306, 1999 WL 1136759, at **1 (10th Cir. Dec. 13, 1999). The Court raises the time bar to Defendant's § 2255 motion *sua sponte* and will allow him an opportunity to respond to this Order. *See Hare v. Ray*, No. 00-6143, 2000 WL 1335428, at **1 (10th Cir. Sept. 15, 2000) (noting that timeliness of § 2254 petition was raised *sua sponte* and allowing response); *Hines v. United States*, 971 F.2d 506, 507-09 (10th Cir. 1992) (same for procedural default in § 2255 proceeding). Failure to respond to this Order or otherwise show cause may result in dismissal of the § 2255 motion without further notice. *See* § 2255 R. 4.

IT IS THEREFORE ORDERED that, within thirty (30) days from entry of this Order, Defendant file a response showing cause, if any, why his § 2255 motion should not be dismissed as untimely.



UNITED STATES MAGISTRATE JUDGE